IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9930 of 1998

Date of Decision:22.9.2004.

GIRISHKUMAR MOHANBHAI PATEL

Versus

UNION OF INDIA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:

1. Special Civil Application No. 9930 of 1998
   MR SK PATEL for Petitioner No. 1
   MR ANANT S DAVE for Respondent No. 1-2

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

Petitioner joined Army in 1987. At that stage, he was subjected to medical examination and found medically fit. This examination was conducted by the Military Doctors. Petitioner undergone normal training/

Whether reporters of Local Papers may be allowed to see the Judgment?

physical training for one year four months, at AMC C&S Lucknow. He was posted at Medical Hospital, Panagarah. Thereafter, transferred to Medical Hospital, Mathura. Afterwards, he was sent for Intermediate Cadate Corpus, physical training from 15.2.93 to 17.4.93, completed successfully, found fit, record maintained to that effect by the Army.

2. Thereafter, because of some problem and disturbance, the petitioner got himself checked up and he was admitted in M.H. Mathura. He was medically diagnosized Non Insurlanca Dependent Diabetes Melaities. Thereafter, he was placed in low medical category CEE(T) for six months with effect from 4.11.1993. Again, he was medically examined after six months and put in EEE Category. This report was conveyed to the Head Quarters and approved on 13.6.1994. The petitioner was discharged from Military Service on Medical Ground vide Discharge Certificate No. 1026 dated July 20, 1994. Vide order dated May 6, 1997, the petitioner was informed that he was not entitled to disability pension under the Army Pension Regulation after examination of the medical report and documents annexed thereto by the Pension Office, Allahabad. However, disability/invalid gratuity and DCRG of Rs.15,538.00 for the qualifying service was sanctioned. Appeal, preferred by the petitioner, was also rejected. As a result, non-grant of disability pension has been challenged by the petitioner through this petition.

3. Petitioner submits that he was physically fit at the time of joining Army Service. He was subjected to Medical Examination by the Army Doctors. No disease was detected and reported. Thereafter, he completed training/physical training course for a period of more than a year, posted as Naik SKT (Storekeeper Technician) in the month of January, 1987 in Army Medical Corpus, thereafter in MH Panagarah and then in MH Mathura. He sustained training courses quite successfully. Therefore, disease detected on medical examination on 28.10.1993 developed and aggravated during the Army Service. Respondents have not been able to demonstrate that the petitioner suffered from this disease at the time of joining the army service. Even otherwise, strong presumption that the petitioner was physically fit at the time of entering the army service since no disease was detected on medical examination, has not been controverted by the respondents. Therefore, the

contention that the petitioner may have suffered from this disease at the time of entering Military Services and the disease was such which could not easily be detected cannot be sustained. From medical report, it can be gathered that the composite assessment of the petitioner's disability is to the extent of 30 per cent. Counsel for the petitioner has placed reliance on decision of this Court in Special Civil Application No.4455 of 1998 Kanaiyalal D. Patel versus Government of India and Ors. [2004 (2) GLR page 1238] and apex court decision in Union of India versus Neki Ram [AIR 2004 SC (1st Suppln)1235].In para 3 and 4, the apex court said :

"3. The trial Court examined the matter from various angles and found that when he joined the service he was hale and hearty and no sign of ill health could be found in him at that time. It was only when he was in service he developed the said disease. in the circumstances, the Court found that the matter should have been put beyond doubt that it was not as a result of Military service or attributable to Military service particularly when he had served continuously for four years. There is no material placed before the Court to rebut the presumption that he had developed the disease in the course of his service. On that basis, the trial Court decreed the suit. The first appellate Court also reiterated the view of the trial Court and High Court dismissed the second appeal. Hence this appeal.

4. Mr. R.C. Verma, learned counsel appearing for the appellant relied upon the decision of this Court in Union of India v. Baljit Singh (1996) 11 SCC 315 to contend that in the absence of proof of injury or the illness developed due to Military service being aggravated thereby, there cannot be a decree to pay him disability pension. But this decision cannot be of any assistance to the learned Counsel in view of the facts that the trial court and first appellate court have arrived at their findings on the facts of the case. The High Court and the Courts below were influenced by the fact that the respondent was hale and hearty when he joined service and could not have taken ill of the kind complained unless it be in the course of service or aggravated the disease. The initial fact was not disproved by the appellant. "

Turning to the facts of this case, we have no manner of doubt that the petitioner suffered physical disability during the Army Service, therefore, contention to the contrary is liable to be rejected. Petitioner is entitled to disability pension and order disentitling to the same is set aside. Accordingly, petition is allowed. Respondents are directed to grant disability to the petitioner with effect from the date of his discharge. Rule is made absolute, with no order as to costs.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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